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The Waldorf-Astoria Towers
New York 22, New York
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The Honorable Albert W. Hawkes,
United States Senate,
Washington, D. C.

My Dear Senator:

I have your letter asking my views about the pending Treaty with Mexico allocating the waters of the Colorado River and its relation to the Colorado River Compact. I have gone back over the records, I have studied the Treaty and I visited the locality again a year ago to bring myself up to date.

Certainly we should deal with Mexico as a friend, and not at arm's length. But when we make a treaty about water, we are dealing with the life-blood of the west, and shaping its whole destiny.

As you know, I had the honor to be Chairman of the Colorado River Commission which settled the Colorado River Compact in 1922 and other matters relating to the development of the river. And during the following years I had many duties involving these questions.

I. *The Water Supply and the Colorado River Compact.*

The allocations of water made by the Colorado River Compact in 1922 were necessarily based on so short a period of stream flow records that we were compelled to keep the allocations to the different areas within safe limits. Many delegates were convinced that the demands for water, particularly in the Lower Basin, could not be satisfied within the allocations as made. But it was thought better to proceed for a period of years until a more accurate determination could be made, both of the water supply and the requirements of the several states, before attempting a final allocation of the complete supply.

Further experience has shown great changes in the whole problem of supply:

1. *Reduction in water supply estimates.* The longer the period of stream flow records, the less becomes the safe yield of the River in extended low flow periods.

As a result of the records of run-off for the period of 1931 to 1940 inclusive, it has been necessary to reduce the figure of safe water supply by at least 1,000,000 acre-feet.

2. *Excess of demand over supply in the Upper Basin.* In 1922, there was general agreement that the allocation of 7,500,000 acre-feet per annum to the Upper Basin would be more than ample to meet its ultimate requirements.

At that time, diversions of water outside the Basin were estimated at not over 750,000 acre-feet. Today there are under construction and investigation transmountain diversion projects considered feasible, which will divert over 2,000,000 acre-feet per annum from the Upper Basin, and others are being discussed requiring another 1,000,000 acre-feet. As a result, it is now realized that the allocation will fall far short of ultimate needs of the Upper Basin.

3. *The Upper Basin's guaranty to the Lower Basin.* In 1922 the Compact requirement, that the upper states never deplete the flow of the River to less than 75,000,000 acre-feet in any ten-year period, was not considered burdensome.

Studies now available show that to meet this obligation, the upper states will have to provide at least 20,000,000 acre-feet of hold-over storage to be used during low flow periods, comparable to 1931-40, or lacking storage, will have to limit their use to about 64 per cent of their allocation, in order to make available the 75,000,000 acre-feet at Lee Ferry.

4. *Unanticipated uses in the Lower Basin.* In 1922, no one conceived of an aqueduct taking 1,000,000 acre-feet per annum out of the basin to the coastal plain of Southern California. This aqueduct has now been built and is in operation.

In 1922, the possibility of a project over several hundred miles long, involving continuous tunnels 80 miles or more in length for the carrying of main stream water to central Arizona for irrigation purposes, was thought fantastic. Today such a project is under detailed study.

5. *Conclusion as to the water supply.* From the foregoing and other facts, there can be only one conclusion; that as time passes, the safe water supply of the Colorado River is found to grow less, while the requirements for, and value of, that water increase many fold. The Colorado River as a natural resource of the United States becomes of greater and greater importance and value each year; it should be guarded and preserved for the use and benefit of our people.

6. *The Compact's references to a treaty.* At the time the Compact was negotiated, the possibility that a treaty might be made with Mexico some day was recognized, and that under it Mexico might become entitled to the use of some water. In that event, the Compact divides the burden between the Upper and Lower Basins, but it cannot be said that the Compact "foreshadows" such a Treaty as that now proposed.

I am sure none of the commissioners who negotiated the Compact had any idea that our Government would offer to guarantee Mexico any such amount as the 1,500,000 acre-feet stated in the proposed Treaty. At that time Mexico was using about 500,000 to 600,000 acre-feet per year. Her lands were subject to a serious flood menace every year, and the silt in the river water was clogging her irrigation canals and ditches and thus threatened her whole development. It was a serious question as to how Mexico could prevent disaster to the lands she was then cultivating, much less increase that use.

Now by means of American works, we have controlled the flood water and silt, which is of tremendous value to Mexico. No one would want to deny these benefits to Mexico. But had it been suggested in 1922 that the United States was to be penalized in the future by having to furnish free to Mexico a volume of water, made available by works constructed in the United States, to supply lands made possible of development only because of those works, I know it would have met with the opposition of the Compact framers. Moreover, had the Compact negotiators considered such a treaty possible as the present one, I am not sure that agreement on a compact could have been reached. Certainly, the compact that was concluded would have been different.

II. *The Present Treaty.*

There are three serious objections to the Treaty in its present form, all of which seem capable of remedy before the treaty is ratified but will cause endless trouble if not. These relate to (1) the allocation of water, (2) the construction of works, and (3) administrative provisions.

1. *As to the allocation of water.* (a) *Quantity:* The Treaty guarantees at least 1,500,000 acre-feet per year to Mexico, but contains no specific allocation or reservation of water to the United States. This guarantee takes precedence over older American users who are paying for the storage works which alone will make possible Mexico's increase of use above the quantity of approximately 750,000 acre-feet which she used before construction of the Boulder Canyon Project. Each country ought to be allocated a prorata of the flow of the River so that Mexico will share the hazards of the American water supply if she is to share the benefits of the American storage. The so-called "escape clause" entitling the United States to diminish deliveries only if her own consumptive use is curtailed by extraordinary drought is so uncertain in operation as to invite acrimonious dispute.

(b) *The impairment of existing American rights:* The Boulder Canyon Project Act stipulated that the waters stored by that project should be used exclusively within the United States. Congress appropriated $165,000,000 on that representation to the taxpayer. Communities in the Lower Basin entered into contracts with the United States reciting that pledge, and in reliance upon it have incurred over $500,000,000 of debt to repay the Government's whole investment and to construct aqueducts, canals, transmission lines, etc., to use the water so stored and paid for. Figures used by the Reclamation Bureau show that in a decade like 1931-40, if 1,500,000 acre-feet were guaranteed to Mexico each year, some 15,000,000 acre-feet of Boulder Canyon storage would have to be drawn down for that purpose, exhausting substantially the whole active storage of the reservoir, after making deductions for flood control and dead storage. Our pledge ought to be kept. If it is to be broken, Mexico ought to be admitted no further than to a basis of parity with, not precedence over, the American users who assumed the obligation to

pay for these works on the promise that the benefit would be theirs.

(c) *Quality:* The Treaty's evasion as to quality of water to be furnished to Mexico should be clarified one way or the other: Either by adding a reservation requiring Mexico to take all water regardless of quality, and even though it is unusable, which is what the State Department says this Treaty means, but which must be a profound shock to Mexico; or, in the alternative, providing for the delivery of waters through the All-American Canal only, assuring Mexico substantially the same quality as that delivered to American projects through the same Canal, and disclaiming specifically the quality of any water delivered to Mexico in the bed of the stream through works which she may herself build.

2. *Diversion works.* These are the key to the Treaty. Until the Upper Basin is fully developed, several million acre-feet per year will flow to the sea, as has always been the case. The Boulder Canyon Project power operations convert this into a smooth flow, instead of spring floods, but the greater part of the water discharged for power generation will nevertheless reach Mexico during the winter season when she does not want it for irrigation. Mexico lacks sites for diversion works; these are located on American soil. The Treaty (i) obligates the United States to build Davis Dam to make the Boulder Canyon winter power discharges available for Mexican summer irrigation, (ii) requires Mexico to build a diversion dam, which may be partly on American soil, within five years, (iii) authorizes her to use American power for pumping, (iv) gives her part of the power proceeds from Pilot Knob power plant, built at American expense, to help Mexico pay for some of these investments, and (v) offers her the use of the All-American Canal. The combined effect is to make possible the use of several million acre-feet per year, not merely 1,500,000 acre-feet, of the waters conserved by the Boulder Canyon Project. That is to say, the Treaty alone makes possible the increased Mexican use of the temporary American surplus, the fear of which is the impelling reason for making any treaty at all.

The Treaty obligation laid on Mexico to construct a diversion dam wholly or partly on American soil within five years should

be exactly reversed, by a prohibition against construction of any such works. No dam should be built so long as the Mexican allocation can be delivered through the All-American Canal. Adequate capacity was built into these works for this very purpose, and 1,500,000 acre-feet can be delivered through the All-American Canal to Mexico for many years without damaging any American interest in that Canal. When, as and if the diversion dam becomes necessary to capture return flow from American projects and thereby supplement the deliveries through the All-American Canal, the dam should be built wholly on American soil and owned, operated and controlled by the United States. Its outlet works, in conjunction with those of the All-American Canal, should be so limited as to be capable of delivering to Mexico no more than 1,500,000 acre-feet in all in any year, if that is to be the Treaty allocation. The Treaty's present defect is that it places no limitation whatever on Mexican use. A large new civilization will be pyramided on this "temporary" use. The Treaty's limitation on the legal right acquired by that use can be swept away by one device or another when the alternative is the abandonment of that civilization. We should not build works to aid Mexico to take more water than we are willing to allocate to her in perpetuity.

No diversion dam either on American or Mexican soil should be permitted until the floods of the Gila River are fully controlled. If Mexico elects to try to build a diversion dam on her own soil, she should stipulate against flooding or damaging American lands. A limitation should be placed upon the permissible return flow from Mexico which floods into the Salton Sea, lying below sea level.

3. *Administrative provisions.* This Treaty foreshadows the more important post-war treaties to come, and is an ominous precedent. It delegates excessive power to a commission of two individuals, one American and one Mexican. Such delegation, in the case of American domestic statutes, has seriously weakened the power of Congress, and has troubled every student of the American form of government. But in the field of our own laws, Congress at least has the power to reclaim the power it has extravagantly conferred upon the executive. The significant innovation of this Treaty is that the power delegated here, even as to domestic functions of the Commission or its officers,

cannot be reclaimed without the consent of Mexico. The Treaty endures until Mexico agrees to another one. If the Senate fails to retain, by reservation, the power of Congress over the commissioners created by this Treaty, and the large funds they will control, it will be setting a precedent for the all-important post-war settlements.

4. *Conclusions as to the Treaty.* A treaty with Mexico on the Colorado River is desirable, as a matter of principle, but is by no means indispensable. The present Treaty contains many good features, particularly as to the Rio Grande, but its three cardinal defects as to the Colorado ought to be remedied by Senate reservations. Otherwise, the Treaty will cause, not cure, endless discord with Mexico and contention among the seven states of the Colorado River Basin.

If Mexico declines to accept such reservations, it would be better to have no treaty at all than to perpetuate the interpretations which would be disclosed by such refusal.

Without a treaty, the bogey of arbitration need not frighten us. We should not operate the Boulder Canyon Project in any event so as to deliver Mexico less water than she was using before we built that project, but we cannot be compelled by arbitration to so operate it as to increase the flow available to her in the summer nor to build or furnish the diversion works without which she cannot increase her use. It is only the Treaty, and the works which it promises, which make that increase possible.

With a treaty, we are bound to arbitrate every dispute arising under it, including our use of our own works, and the text of this Treaty is replete with uncertainties enough to fill the arbitration courts for many years.

With kindest regards,

Yours faithfully,

[s] Herbert Hoover

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